

App. No. 10/062,167
Response mailed March 10, 2005
Re: Office Action mailed January 10, 2005

REMARKS

In response to the Office Action mailed January 10, 2005, the Applicant respectfully requests that the Examiner consider the following remarks. In light of the remarks, claims 1-20 remain pending in the application. The Applicant respectfully requests further examination and reconsideration of the application in light of the remarks.

Rejection of Claims 1-20 Under 35 U.S.C. § 112

The Examiner rejected claims 1-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Applicant respectfully traverses the rejection. In particular, the Examiner asserted that the written description does not support the limitation of a "closed loop."

The Applicant respectfully submits that the Examiner has inferred an unnecessarily narrow meaning of "closed loop." In particular, the Examiner asserted that "closed loop" means one that is continuous with no breaks or disconnects throughout (i.e., a "closed loop" has neither a beginning nor an end). The Applicant respectfully submits that the narrow meaning asserted by the Examiner is not consistent with the commonly understood meaning of "closed loop," which is broader. In this regard, the Applicant respectfully refers the Examiner's attention to U.S. Patent No. 6,862,838, U.S. Patent No. 6,863,657, and U.S. Patent No. 6,863,855. A copy of each of the patents has been submitted with this response for the Examiner's convenience. With regard to U.S. Patent No. 6,862,838, the patentee described items

32 and 42 as closed loops. For example, column 6, lines 28-34, clearly define item 32 as a closed loop even though the ends of the loop are crimped together. Moreover, the patentee used the "closed loop" terminology in claim 1 of the patent to describe such an embodiment. Similarly, U.S. Patent No. 6,863,657 defines item 16 as a closed loop even though the ends of the fabric material are sewn together to form a seam 30 (e.g., see column 2, lines 34-41). Finally, U.S. Patent No. 6,863,855 describes the conventional use of a cable tie as forming a closed loop (e.g., see column 1, lines 13-18; column 3, lines 45-49; and column 4, lines 65-67). In light of these recently issued patents, the Applicant has used the "closed loop" terminology in a manner that is consistent with the commonly understood meaning of the terminology. Therefore, the Applicant respectfully submits that the rejection of claims 1-20 under 35 U.S.C. § 112 may be properly withdrawn.

Rejection of Claims 6, 14, 19, and 20 Under 35 U.S.C. § 102(b)

The Examiner rejected claims 6, 14, 19, and 20 under 35 U.S.C. § 102(b) as being anticipated by Frizzell. The Applicant respectfully traverses the rejection. Frizzell fails to teach or suggest every element of the claims. In particular, as shown in Figure 1 and described in column 1, lines 46-50, the wire brace 16 taught by Frizzell terminates at opposite ends of rail 11. As a result, the wire brace 16 does not form a closed loop such as in the claimed invention. Therefore, the Applicant respectfully submits that Frizzell cannot support the rejection of claims 6, 14, 19, and 20 under 35 U.S.C. § 102(b).

Rejection of Claims 1-5, 7-13, and 15-18 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-5, 7-13, and 15-18 under 35 U.S.C. § 103(a) as being obvious over Frizzell in view of Applicant's admitted prior art (AAPA). The Applicant respectfully traverses the rejection.

Each of the claims describe an embodiment of the present invention in which a band forms a closed loop. As discussed above, Frizzell does not teach or suggest a fence assembly or method in which a band forms a closed loop. The Applicant respectfully submits that the AAPA does not overcome this shortcoming of Frizzell.

In addition, with regard to claims 1, 5, and 8-13, the Examiner asserted that the AAPA discloses that the use of a banding machine is well established within the art. The Applicant respectfully traverses this assertion. In addition, the Applicant respectfully submits that some of these claims do not require the use of a banding machine. Nevertheless, the manner in which the wire braces 16 and 17 are used by Frizzell does not suggest the use of a banding machine as asserted by the Examiner. In particular, the Applicant is unaware of any commercially available banding machine that can attach wire brace 16 or 17 as taught by Frizzell. If the Examiner is aware of such a product, the Applicant respectfully requests the Examiner to make the product of record. Moreover, there is no teaching or motivation provided by the cited art to use a banding machine to band a fence section. Banding machines have typically been used in other arts unrelated to the present invention. Finally, with respect to dependent claims 12 and 13, there is no teaching or suggestion in the cited art to band a fence

section for shipping and installation, thereafter removing the band from the fence section. In particular, Frizzell teaches a fence system in which wire braces 16 and 17 are permanent.

With regard to claims 2-4, 7, and 15-18, the Examiner has asserted that it would have been obvious based on the AAPA to band a fence section comprised of rails, wherein each rail has a channel or is formed of plastic. The Applicant respectfully traverses this assertion. There is no teaching or suggestion in the cited art to band a fence section having these characteristics. In particular, the fence assembly taught by Frizzell does not teach or suggest a fence section having these characteristics. Moreover, Frizzell fails to provide the necessary motivation for banding a fence section that has these characteristics.

Therefore, in light of each of the above reasons alone or in combination, the Applicant respectfully submits that Frizzell in view of the AAPA cannot support the rejection of claims 1-5, 7-13, and 15-18 under 35 U.S.C. § 103(a).

Rejection of Claims 1-20 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-20 as being obvious over Frizzell in view of AAPA. The Applicant respectfully traverses the rejection.

As the Examiner noted, Frizzell fails to disclose a closed loop band. From line 46 to line 76, Frizzell describes the intricate manner in which wire braces 16 and 17 are wrapped around a fence section to secure it together. The manner in which the wire braces 16 and 17 are used by Frizzell does not suggest the use of a banding machine

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as asserted by the Examiner. In particular, the Applicant is unaware of any commercially available banding machine that can attach wire brace 16 or 17 as taught by Frizzell. If the Examiner is aware of such a product, the Applicant respectfully requests the Examiner to make the product of record. Moreover, there is no teaching or motivation provided by the cited art to use a banding machine to band any type of fence section. Banding machines have typically been used in other arts unrelated to the present invention. Also, with respect to dependent claims 12 and 13, there is no teaching or suggestion in the cited art to band a fence section for shipping and installation, thereafter removing the band from the fence section. In particular, Frizzell teaches a fence system in which wire braces 16 and 17 are permanent. Therefore, the Applicant respectfully submits that Frizzell in view of AAPA cannot support the rejection of claims 1-20 under 35 U.S.C. § 103(a).

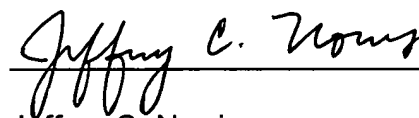
App. No. 10/062,167
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Conclusion

The Applicant has distinguished claims 1-20 over the cited references. Therefore, the Applicant respectfully submits that the present application is now in condition for allowance, and such action is earnestly requested.

Respectfully submitted,

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